

**State of Hawaii**  
**Department of Land and Natural Resources**  
**Office of Conservation and Coastal Lands**  
Honolulu, Hawaii

REF:OCCL:DH

FILE NO.: Cдуа OA-3507

Acceptance Date: February 27, 2009  
180-Day Exp. Date: August 26, 2009

July 22, 2009

**Board of Land and  
Natural Resources**  
**State of Hawaii**  
Honolulu, Hawaii

**REGARDING:** After-The-Fact (ATF) Conservation District Use Application (CDUA)  
OA-3507 for CRM Erosion Control Wall and Slope Stabilization

**APPLICANT:** Ben Welborn for Charles Wichman, Landmark Consulting Services, Inc.,  
P.O. Box 915, Hanalei, Hawaii 96714

**LOCATION:** 123 Kalaiopua Place, Tantalus, Island of Oahu

**TMK's:** (1) 2-5-014:012

**AREA OF PARCEL:** 27,671 Square Feet

**USE:** ~ 1,400 Square Feet (57 feet wide x 24 linear feet)

**SUBZONE:** Limited

**ENFORCEMENT CASE OA-07-75:**

The applicant notes due to a period of heavy rains, erosion, and feral ungulates the accumulation of dirt onto Lower Kalaiopua Place road became a health and safety issue. The applicant hired a company to construct a CRM wall to prevent the negative action to Lower Kalaiopua Place, and to allow adjacent neighbors access to their properties. The applicant applied for a City and County of Honolulu (City), Department of Planning and Permitting (DPP), Building Permit Application (A2007-01-1019).

On April 2007, the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) received the building permit. The OCCL told Mr. Wichman that proper authorization was not received for the rock wall and constituted a violation of Chapter 13-5, Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS). Enforcement Case OA-07-75 was resolved through HOAPS and Mr. Wichman paid a fine of \$600.00 (**Exhibit 1**).

**DESCRIPTION OF AREA/CURRENT USE:**

Currently, a 1952 Single Family Residence (SFR) is located on the 27,671 square foot subject parcel. The subject parcel is steeply sloped with an elevation change of approximately 30 feet over a horizontal distance of 40 feet. The SFR has water catchment, electric, telephone, cable. A cesspool wastewater disposal system is serviced twice a week by the County. Access to the subject parcel is via a private driveway that forks off Kalaipua Place; a county road.

There are no Federal or State listed rare, endangered or threatened species of flora and/or fauna found on the subject parcel. However, feral cats and ungulates visit the site. Vegetation consists of non-native Ape (*Alocasia macrorrhiza*), Blue Ageratum (*Ageratum conyzoides*), Jasmine (*Jasminum multiflorum*), Yellow ginger (*Hedychium flavescens*), Shell ginger (*Alpinia speciosa*), avocado, Bracken fern (*Pteridium aquilinum*), red and green Ti (*Cordyline terminalis*), Epipremnum (*Epipremnum pinnatum*), White Thunbergia (*Thunbergia fragrans*), and grassy weeds. Avian species consist of Japanese white-eye, common myna, red-crested cardinal, and house sparrow. There are no cultural, historical, and archeological resources within or near the site.

Subject parcel TMK: (1) 2-5-014:012 is located in the State Land Use (SLU) Conservation District, Limited subzone (**Exhibit 2 & 3**).

**PROPOSED USE:**

The applicant is requesting ATF CDUA approval for erosion control measures for the subject parcel. The entire length of the existing, unpermitted rock wall at the base of the slope (adjacent to Kalaipua Place) will be replaced due to unsound engineering practices; a new, engineered, CRM rock wall (~1,400 Square Feet - 57 feet wide x 24 linear feet) will be constructed. The wall will act as an erosion control barrier between the slope above Kalaipua Road.

The current slope's instability will be addressed by the removal of 118 cubic yards of loose fill, which was deposited there in 1952 when the driveway was excavated. The slope will be taken down to the underlying native cinders. A long term erosion control blanket landscaped with permanent native vegetation will be constructed. The slope will be stabilized with concrete and steel enforced footing (constructed below the new rock wall). The footing will require excavation (depth wise of a few feet to be determined by the project engineer)(**Exhibit 4**).

**AGENCY COMMENTS:**

CDUA OA-3501 was referred to the following agencies for review and comment: DLNR – Division of Forestry and Wildlife (DOFAW), Oahu District Land Office (ODLO), Division of State Parks, Historic Preservation Division (HPD), Engineering Division, Division of Conservation and Resources Enforcement (DOCARE), Department of Health (DOH), Office of Environmental Quality Control (OEQC), McCully State Library, Makiki/Lower Punchbowl/Tantalus Neighborhood Board, Office of Hawaiian Affairs (OHA), and City and County of Honolulu Planning and Permitting Department (DPP), and Council Member Rod Tam's Office. The following comments were received:

Division of State Parks

No Comment.

Division of Conservation and Resources Enforcement

No Comment.

Oahu District Land Office

No Comment.

Division of Forestry and Wildlife

No Comment.

Historic Preservation Division

HPD determination is "no historic properties affected." There are no known archeological resources located within the project area. Ground disturbance will be minimal, limited to removal of existing fill.

*Applicant Response: It has been determined the existing unpermitted rock wall at the base of the slope (adjacent to Kalaiopua Place) will need to be demolished and replaced with a new, engineered, CRM rock wall. A concrete and steel enforced footing will be constructed below the new rock wall; the footing may require additional excavation to a depth of not more than a few feet (to be determined by the project engineer). Additional ground disturbance will occur in the excavation of the footing. Let us know if the project modifications will change the nature of your comments.*

Engineering Division

The project site is located in Flood Insurance Rate Map (FIRM), Flood Zone D. The Flood Insurance Program does not have any regulation for developments within Flood Zone D.

Department of Health

No Comment.

Office of Hawaiian Affairs

OHA notes the proposed project area is 1800 square feet; potential impacts will be localized and on scale with such a minor proposal. Generally OHA looks for impacts to cultural resources in an environmental review in the form of a Cultural Impact Assessment (CIA). Applicants that rely on past CIA for other projects in the area are usually urged to complete the required CIA particular to their proposed project. OHA points out that in addition to being a small proposal that this is accompanied by an ATF CDUA. We realize some part of the applicant's proposal is already complete a CIA for a partially completed project will probably have little value.

OHA recommends the project area be landscaped with drought tolerant or indigenous species that are common to the area; any invasive species should be removed. Doing so would serve as a practical water-saving landscaping practices, serve to further traditional Hawaiian concept of malama aina and create a more Hawaiian sense of place. Lastly, it would help reduce the amount of impervious surfaces thereby reducing runoff and erosion. practices, serve to further traditional Hawaiian concept of malama aina and create a more Hawaiian sense of place. Lastly, it would help reduce the amount of impervious surfaces thereby reducing runoff and erosion.

*Applicant Response: We propose to conduct erosion control and slope stabilization measures in an area of approximately 1,400 square feet. The project area lies directly adjacent to and above the County-owned Kalaiopua Place roadway. In 2003, the City's Department of Design and Construction (DDC) prepared the Kalaiopua Place Road Improvements Project Environmental Assessment (EA); it included an archaeological, historical and cultural resources assessment of the area. The report noted*

*there were no known Kuleana or commoner land claims near the project site, and no permanent habitation is believed to have occurred on the steep slopes of the project area in traditional Hawaiian times. The exceedingly steep slopes make present day gathering of forest resources difficult at this location; it would be reasonable to assume gathering would focus on areas of easier access. Thus forest resources and access to resources will not be significantly impacted by the Kalaiopua Place Road Improvements Project. We drew from the information, the proximity of the projects, the gradient similarities of the associated slopes, and concluded the proposed project will have no significant impacts upon cultural resources or cultural gathering practices. Plants will be selected to support stabilization of the slope; utilizing native and indigenous plant species (Kuhui, Naupaka, Ti, Akia, Iliee, Nehe, Amau, Kupukupu, Palapalai) wherever feasible and will use plants that are appropriate to the project site.*

City and County of Honolulu, Department of Planning and Permitting

The City notes stabilization of the slope is necessary to prevent soil spillage onto the adjacent Right-Of-Way (Kalaiopua Place). Landscape materials should be selected to ensure stabilization of the slope that are appropriate and characteristic of the Tantalus environment. Civil Engineering notes all required permits should be listed. A Grading Permit and engineer's soil report and slope hazard report prepared by a licensed engineer is required, pursuant to ROH, Section 14-14.2; the current letter is not acceptable as it references a report prepared 30 years ago. A Surface Encroachment Variance must be applied for and obtained. A Notice of Violation was issued to the applicant because Building Permit Application (A2007-01-1019) was not issued. Resident and property owners should be notified prior to any road work or street closure.

*Applicant Response: The proposed erosion control and slope stabilization actions seek to address and reduce the risk of erosion in the project vicinity. The applicant also proposes to rectify and reconstruct the unpermitted rock wall as the base of the slope. No significant visual impacts are anticipated. Plants will be selected to support stabilization of the slope; utilizing native and indigenous plant species (Kuhui, Naupaka, Ti, Akia, Iliee, Nehe, Amau, Kupukupu, Palapalai) wherever feasible and will use plants that are appropriate to the project site. Plans will be submitted to the Department of Planning and Permitting. Reports (Soils Report, Slope Hazard Report) will be updated in the FEA. All relevant grading and building permits will be obtained in order to resolve the City's Notice of Order (2007/NOO-352. The Traffic Control Plan will be revised.*

**ANALYSIS:**

Following review and acceptance for processing, the applicant was notified, by letter dated March 5, 2009 that:

1. The proposed use is an identified use within the Limited subzone of the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR), L-3, EROSION CONTROL, D-1, "erosion control, flood control, and other hazard prevention devices or facilities;" please be advised however that this finding does not constitute approval of the proposal;
2. A public hearing pursuant to HAR 13-5-40 will not be required;
3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The Final Environmental Assessment (FEA) for the project will be

submitted to OEQC to be published in the May 23, 2009 issue of the Environmental Notice.

The draft environmental assessment (DEA) for the project was published in the September 23, 2008 issue of the Environmental Notice.

#### **SECTION 13-5-30 CRITERIA:**

HAR Section 13-5-30 provides eight specific criteria that the department or board shall apply to proposed land uses within the Conservation District. Land uses must conform to the following criteria:

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff notes the proposed project was necessary for the public's health, safety and welfare. Failure to act on the proposal would have lead to further erosion and damage to the adjacent roadway.

2. *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. The proposed soil stabilization and erosion control is necessary for public's health, safety and welfare. The proposed project is necessary at the adjacent county roadway will be affected if there is no action.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management", where applicable.*

Staff notes the project area is not located in the Special Management Area.

4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes project is intended to maintain the existing natural resources of the surrounding area, and Tantalus community. The project does not appear to impact mountain resources in a significant manner.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff notes loose soil will be removed to an offsite location. Staff notes native plants (Kului, Naupaka, Ti, Akia, Iliee, Nehe, Amau, Kupukupu, Palapalai) will be selected when the erosion control blanket is constructed to stabilize the slope. The wall has been engineered to be compatible with the locality and the surrounding areas.

6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the existing physical and environmental aspects will be improved upon with the landscaping of native plants. No open space or natural beauty will be impacted by the project.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve the subdivision of land in the Conservation District.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff notes the project promotes public health, safety and welfare by maintaining the only access for the applicant and the adjacent residents utilizing the county roadway.

## DISCUSSION:

The proposed project is an identified land use in the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR), L-3, EROSION CONTROL, D-1, "erosion control, flood control, and other hazard prevention devices or facilities."

Staff notes the erosion control and slope stabilization action is required due to the project area's topography, erosion factor, public access, and public's health and safety. However, in the course of the processing the CDUA questions were raised regarding: 1) demolition of current CRM rock wall; 2) construction new engineered CRM rock wall; 3) construction of concrete and steel footings.

Staff is satisfied the applicant answered all City issues and concerns with the submittal of the CDUA and FEA. Staff notes it is unfortunate that the applicant, in trying to correct the erosion issue, created a more unfortunate situation and the permitting factor was protracted. However, staff feels this type of project requires correctly engineered plans and drawings due to the project area characteristics.

Staff notes the existing unpermitted rock wall at the base of the slope (adjacent to Kalaiopua Place) will be demolished and replaced with a new, engineered, CRM rock wall. Concrete and steel enforced footings will be constructed below the new rock wall. The project engineer will submit construction plans that reflect the excavation depths and ground disturbance. The action will affect ~ 1,400 square foot (57 feet wide x 24 linear feet) area, and remove approximately 118 cubic yards of dirt adjacent from the driveway to an offsite location.

Staff notes positive impacts associated with the proposed project are slope stabilization and increased security and public welfare. Possible negative impacts (increased sedimentation, noise, air quality, compatibility with the surrounding environment, resident access, public service) will be avoided and/or mitigated with Best Management Practices (BMP's), temporary continued use of existing erosion control wall, limited road blockage.

Therefore, staff recommends the following:

**RECOMMENDATION:**

That the Board of Land and Natural Resources (BLNR) APPROVE CDUA OA-3507 for the proposed slope stabilization and erosion control action, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this of HAR 13-5;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
4. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
5. In issuing this permit, the Department and Chairperson have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
6. Any work done on the land shall be initiated within one (1) year of the approval of such use (from the date of the Chairperson's action), and unless otherwise authorized, be completed within three (3) years of the approval (from the date of the Chairperson's action). The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
7. Before proceeding with any work authorized by the Chairperson, the applicant shall submit four (4) copies of the final construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
8. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

9. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
10. Other terms and conditions as prescribed by the Chairperson; and
11. Failure to comply with any of these conditions shall render a permit void under the chapter.

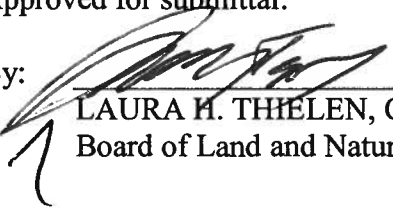
Respectfully Submitted,



Dawn T. Hegger  
Senior Staff Planner

Approved for submittal:

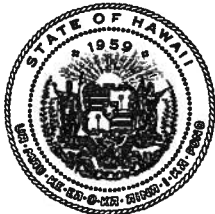
By:



LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources



LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

ENF: OA-07-75

JUL - 9 2008

**CERTIFIED/RETURN RECEIPT**

7007 0710 0003 9987 8602

Charles R. Wichman  
123 Kalaipua Place  
Honolulu, Hawaii 96822

Dear Mr. Wichman,

**SUBJECT:** Enforcement Case OA-07-75

Alleged, Unauthorized Construction of CRM Retaining Wall Located at 123  
Kalaipua Place, Honolulu, Island of Oahu, Subject Parcel TMK: (1) 2-5-014:012

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal  
Lands (OCCL) notes the fine amount of \$650.00 has been paid for Enforcement Case OA-07-75.

The OCCL notes you will still need to submit and process an After-The-Fact (ATF)  
Conservation District Use Application (CDUA) for erosion control, pursuant to Section 13-5-23,  
HAR, L-3, EROSION CONTROL, D-1, "erosion control, flood control, and other hazard  
prevention devices or facilities," within six months from the date you resolve the HOAPS case.

Should you have questions, please call Dawn Hegger of our Office of Conservation and Coastal  
Lands staff at 587-0380.

Sincerely,

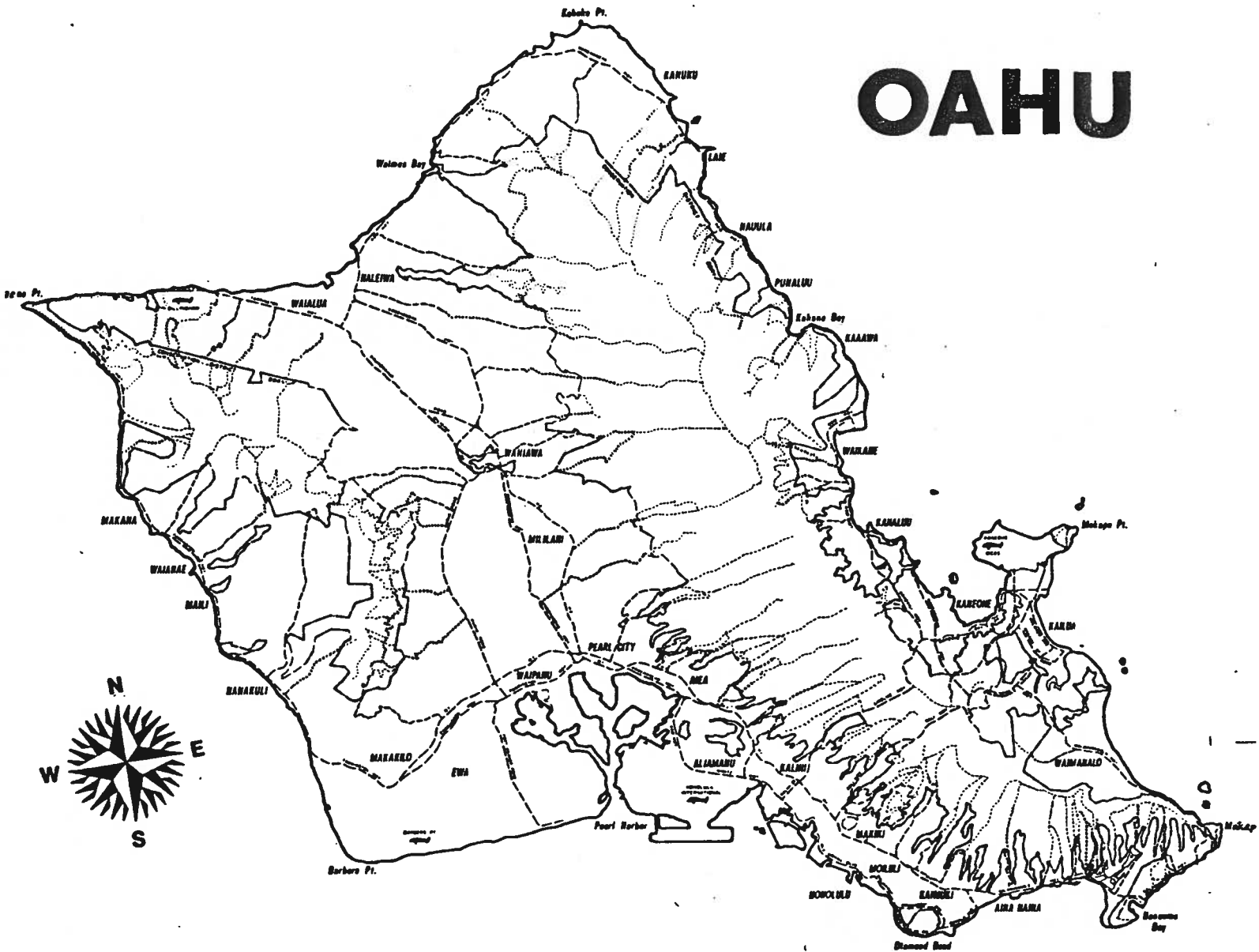
A handwritten signature in black ink, appearing to read "Samuel J. Lemmo", is written over a circular stamp.

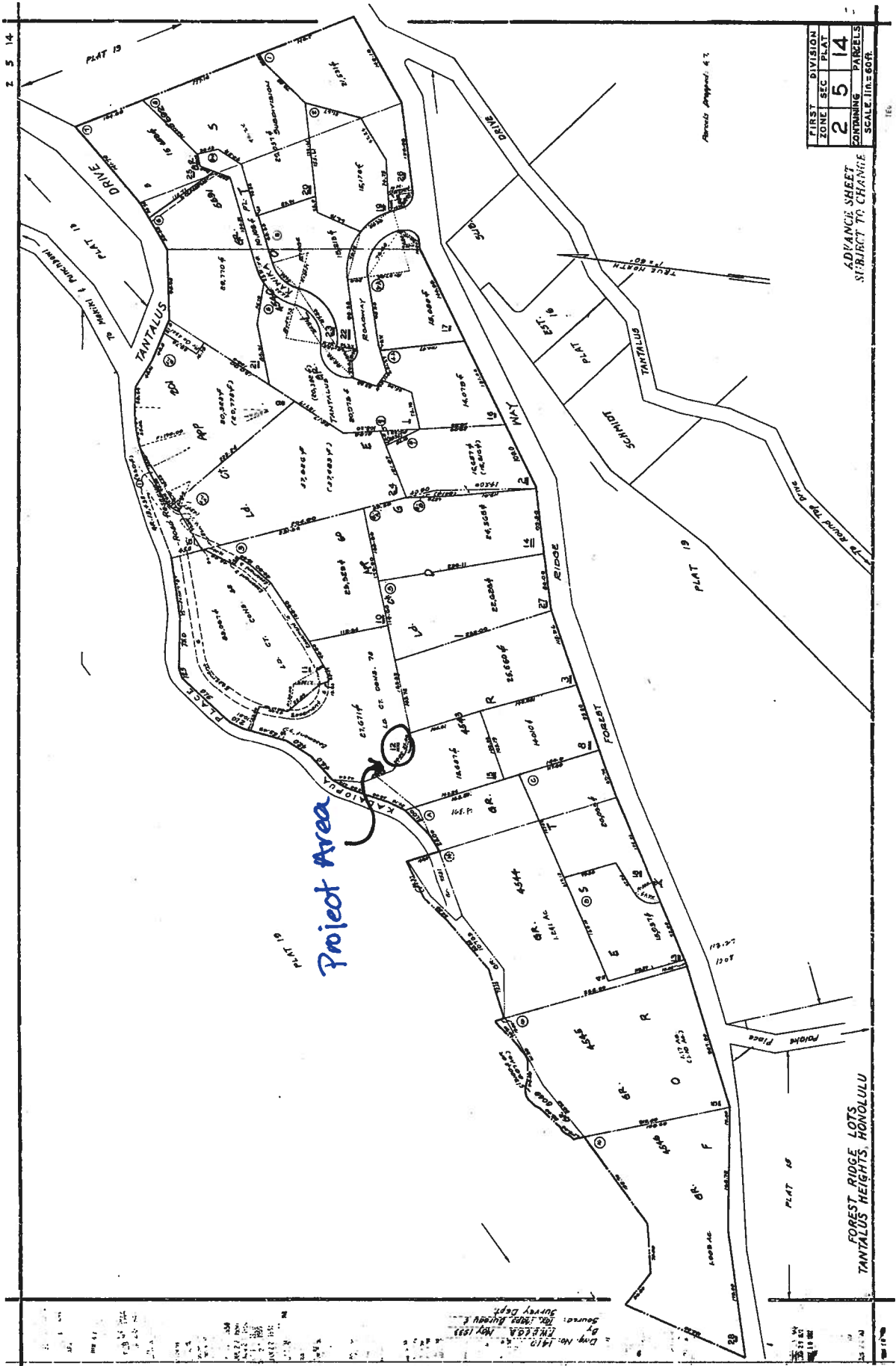
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

cc: City and County of Honolulu  
Department of Planning and Permitting  
ODLO  
P. Edwards DOCARE Oahu Branch  
Ben Welborn, Landmark Consulting Services, Inc., P.O. Box 915, Hanalei, Hawaii 96714

EXHIBIT 1

# OAHU













Picture of wall fronting Kalaiopua Place



Wichman SFR front side

EXHIBIT 4



Left side view of SFH



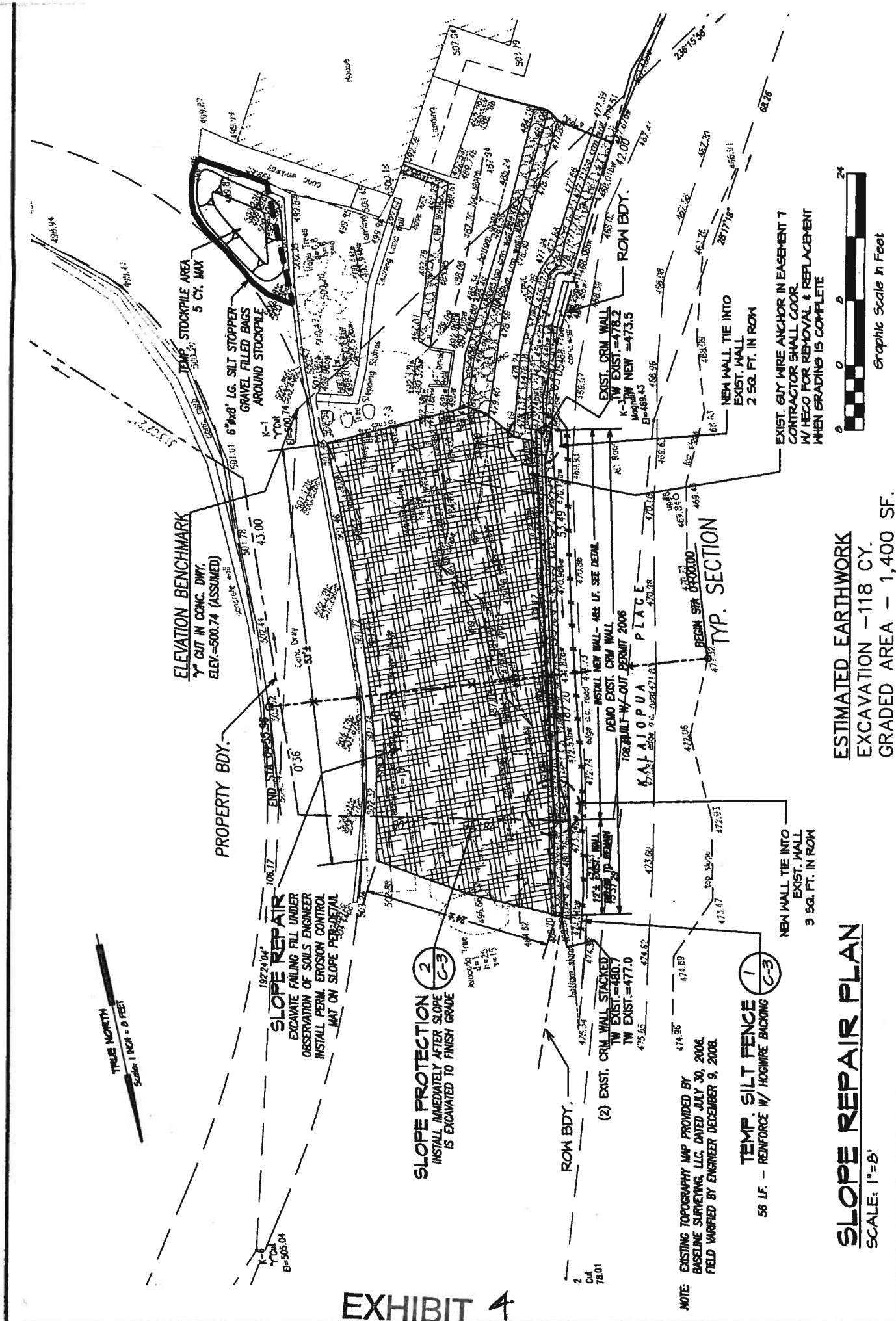
Right side view of SFH





Two close up picture of wall / slope stabilization area



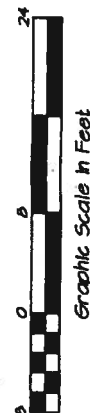


**ESTIMATED EARTHWORK**  
 EXCAVATION - 118 CY.  
 GRADED AREA - 1,400 SF.

**SLOPE REPAIR PLAN**  
 SCALE: 1"=8'

NOTE: EXISTING TOPOGRAPHY MAP PROVIDED BY  
 BASELINE SURVEYING, LLC, DATED JULY 30, 2006.  
 FIELD VERIFIED BY ENGINEER DECEMBER 9, 2008.

EXIST. GUY WIRE ANCHOR IN EASEMENT 1  
 CONTRACTOR SHALL COOR.  
 W/ HECO FOR REMOVAL & REPLACEMENT  
 WHEN GRADING IS COMPLETE



**SLOPE PROTECTION**  
 (2) C-3  
 INSTALL IMMEDIATELY AFTER SLOPE  
 IS EXCAVATED TO FINISH GRADE

**SLOPE REPAIR**  
 EXCAVATE FAILING FILL UNDER  
 OBSERVATION OF SOILS ENGINEER  
 INSTALL PERM. EROSION CONTROL  
 MAT ON SLOPE PER DETAIL

**TEMP. SILT FENCE**  
 (1) C-3  
 56 LF. - REINFORCE W/ HOOKWIRE BACKING

**(2) EXIST. CRM. WALL STACKED**  
 TW EXIST. = 480.7  
 TW EXIST. = 477.0

NEW WALL TIE INTO  
 EXIST. WALL  
 3 SQ. FT. IN ROW

**TYP. SECTION**

102' BUILT-W/OUT PERMIT 2006  
 KALAIPOUA PLACE

DEM. EXIST. CRM. WALL  
 102' BUILT-W/OUT PERMIT 2006

ROW BDY.

ROW BDY.

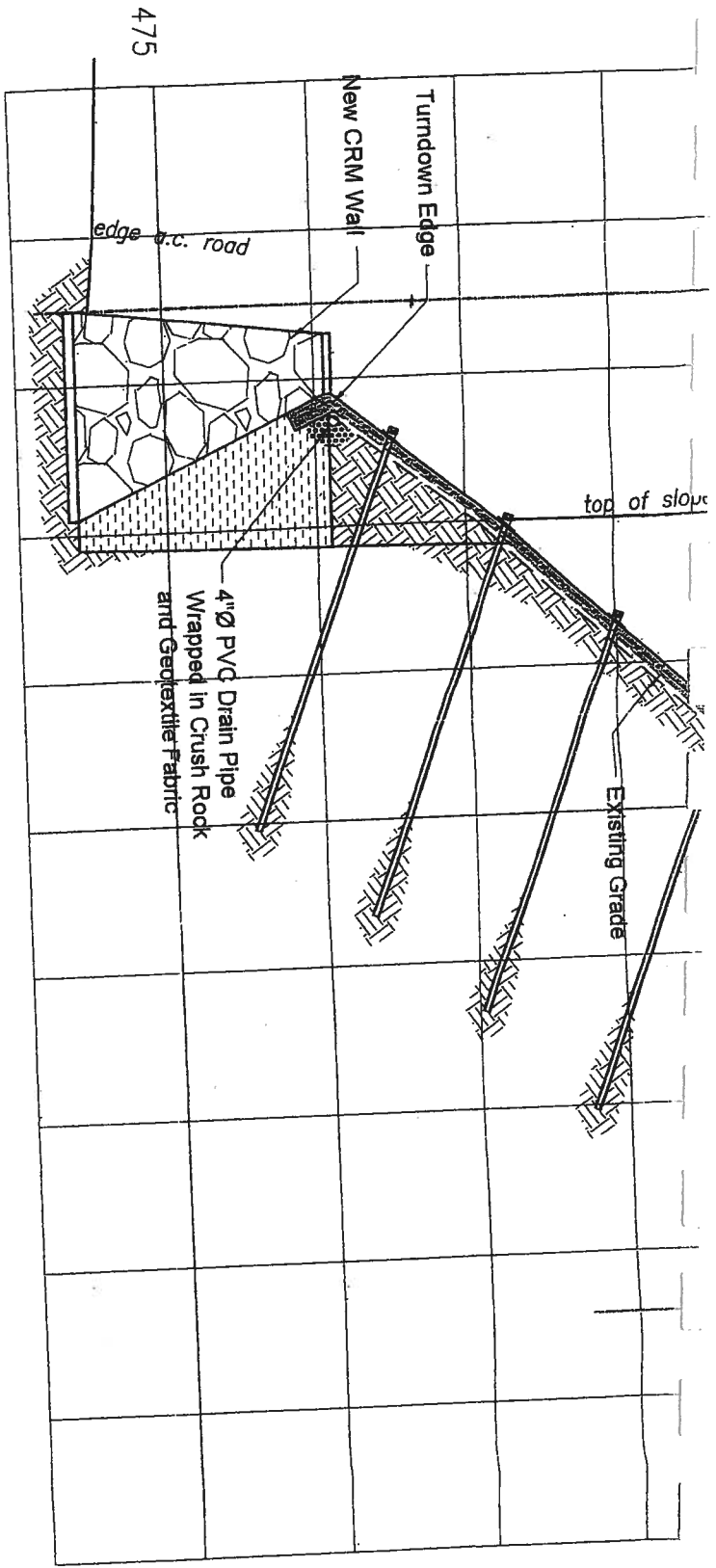
PROPERTY BDY.

ELEVATION BENCHMARK  
 1" CUT IN CONC. DWY.  
 ELEV. = 500.74 (ASSUMED)

TEMP. STOCKPILE AREA  
 5 CY. MAX  
 GRAVEL FILLED BAGS  
 AROUND STOCKPILE

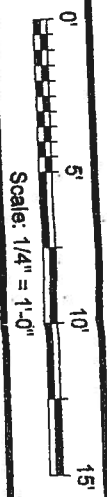






Revised  
11/29/07

# Cross Section



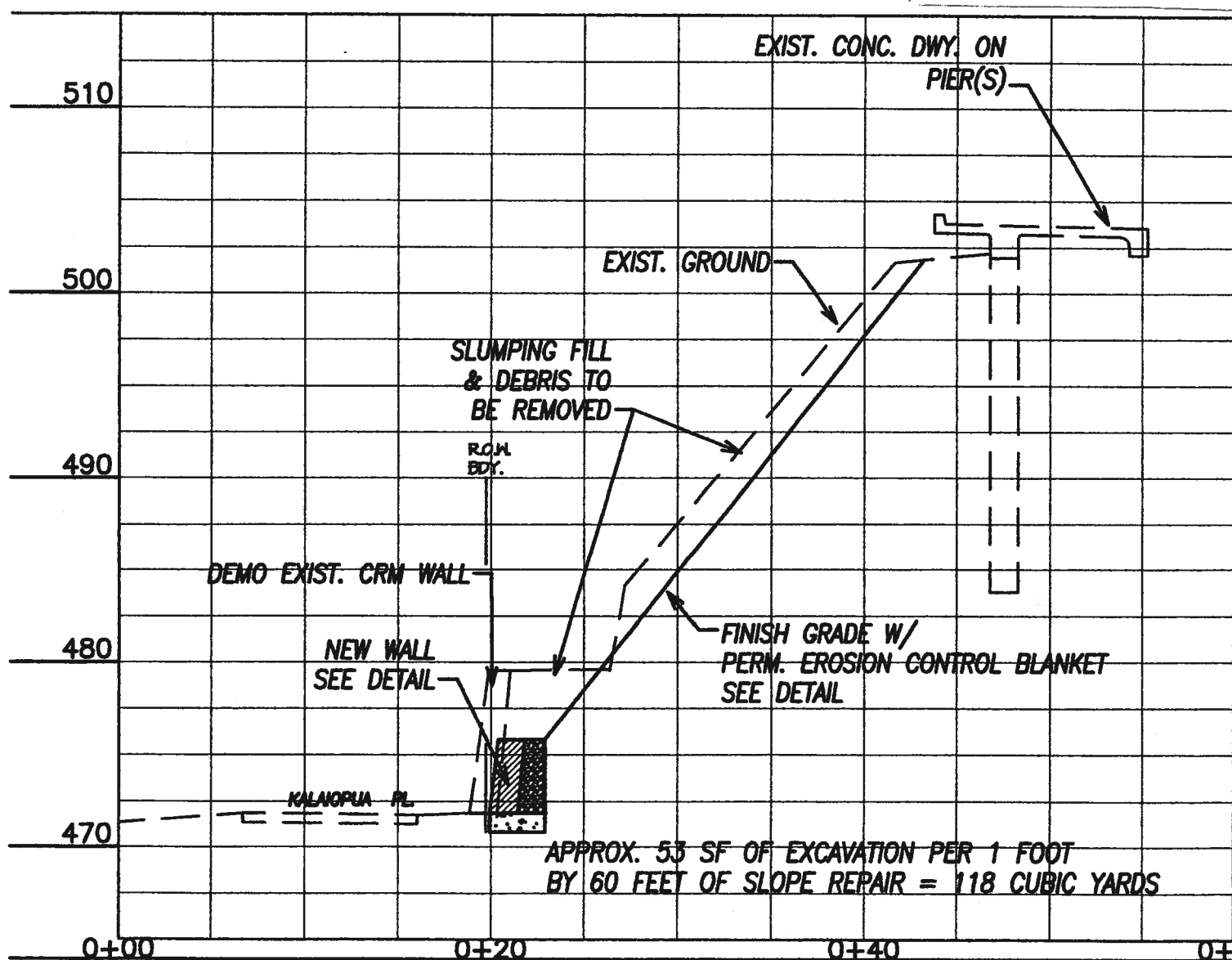
2  
C-2

Cross S

475

New CRM

**PLATE 4**  
**CROSS SECTION**  
**2008-04-01 03/09**  
 Provided by Wagner  
 Engineering Services, Inc.



**TYPICAL SECTION**

SCALE: 1"=8' H 1"=8' V

REVISIONS  
BY \_\_\_\_\_ DATE \_\_\_\_\_

FILE 11368-C01

CHECKED BY \_\_\_\_\_ DATE 3/2/17

